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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 27, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

RE: In the Matter of Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers (GN Docket No. 94-33)

Dear Mr. Caton:

Enclosed for filing on behalf of ALLTEL Mobile Communications, Inc. are an original and nine copies of its comments in the above referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Sincerely,

Carolyn C. Hill
Federal Regulatory Counsel

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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GN Docket No. 94-33

FEDERAL COMMUNICATIONS COMMISSION
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Comments of ALLTEL Mobile Communications, Inc.

ALLTEL Mobile Communications, Inc. (ALLTEL) hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice"), released May 4, 1994, FCC 94-101, in the captioned proceeding. ALLTEL and its subsidiaries provide cellular and paging services in various parts of the United States and, therefore, will be affected by the Commission's proposals herein regarding the application of certain Title II provisions to commercial mobile radio service (CMRS) providers.

Introduction

In its Second Report and Order in General Docket No. 93-252, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, released March 7, 1994, 9 FCC Rcd. 1411, the Commission determined to forbear from applying Sections 203, 204, 205, 211, 212, and 214 of the Communications Act of 1934, as amended, to any service classified as CMRS. As part of its evaluation of the applicability of Title II to CMRS providers, the Commission indicated it would consider additional regulatory relief in a proceeding that would gather a more extensive record on the potential effects of the remaining sections of Title II on particular types of CMRS providers within each class of service. The instant proceeding is that response.

Regulatory symmetry should be maintained for CMRS providers.

Central to the adoption of the recent amendments to Section 332 of the Communications Act was the intent of the Congress to create regulatory symmetry among similar mobile services. ALLTEL believes that in significant respects the Commission's Second Report and Order was consistent with that intent. The Commission achieved this by its thorough examination of all the existing mobile services as well as the proposed personal communications services and the resulting classification of those services as either CMRS or private radio service.

The other Congressional objective reflected in the amendments to Section 332 was the appropriate level of regulation to be established and administered for CMRS providers (Id. at para. 14).

Mindful of these two mandates, in the Second Report and Order, the Commission sought to establish as a principal objective that unwarranted regulatory burdens were not imposed on CMRS providers (Id. at para. 15). ALLTEL endorses the continuation of this important objective.

In determining whether to forbear or not from application of various provisions of Title II to CMRS providers, it is of fundamental importance that the Congressional mandate of regulatory symmetry be maintained with respect to all CMRS providers. To do otherwise will result in a return to the same disparate regulatory treatment which the amendments to Section 332 were designed to eliminate in the first place. Thus, in deciding whether to apply certain provisions of Title II, the Commission should determine: (1) the underlying purpose served by adoption of that provision of the Act in the first instance; (2) whether that

purpose continues to exist with respect to all CMRS providers; and (3) whether there are technical and cost considerations that would preclude application of a particular provision of Title II to CMRS.

Based on ALLTEL's review of the Commission's Notice, and applying the above criteria, there are certain provisions in Title II which do not appear to have any application to CMRS providers. While these provisions appear to be pro-consumer, the problems that they were designed to address do not exist in CMRS industry. For example, the Telephone Operator Consumer Services Improvement Act (TOCSIA) is codified in Section 226 of the Communications Act. However, the abusive practices which TOCSIA was designed to prevent – overcharges, splashing of calls, and blocking of access to preferred interexchange carriers – do not have any nexus to CMRS providers. There is simply no problem to fix or public interest to be served by the imposition of TOCSIA requirements on any CMRS provider. TOCSIA was adopted in response to a problem in another industry and that problem has not been shown to exist in CMRS.

Moreover, as pointed out by GTE in its recent petition for reconsideration of the Second Report and Order, forbearance from the TOCSIA requirements of Section 226 meets the requirements of the three pronged test for forbearance because mobile users have not complained about the practices TOCSIA was designed to address; there is a strong incentive to stimulate usage by keeping rates low and ensuring that customers are informed about the identity of the service providers, and the relevant charges; and the imposition of TOCSIA requirements will not only cause unwarranted, excessive costs, but, in many instances, compliance may be impossible (GTE petition for reconsideration, pages 3-6).

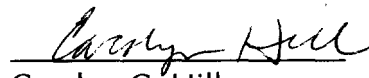
Conclusion

Regulatory symmetry must be the cornerstone of any Commission decision involving the application of Title II provisions to CMRS. To accomplish this, the Commission's deliberations should include the underlying purpose served by adoption of a particular provision of Title II in the first instance; whether that purpose continues to exist with respect to all CMRS providers, and whether there are technical and cost considerations that would preclude application of a particular provision of Title II to CMRS.

Respectfully submitted,

ALLTEL Mobile Communications, Inc.

By


Carolyn C. Hill
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655 15th Street, NW, Suite 220
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Its Attorney

June 27, 1994

Certificate of Service

I, Rita Ferrando, do hereby certify that on this day of June 27, 1994, copies of the foregoing comments were served by hand, or by U. S. Mail, postage prepaid on the following:

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Rita Ferrando

June 27, 1994